

section and will specify that time period in the notice. If a submitter has any objection to disclosure, a detailed written statement in support of the objection must be submitted. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(h) *Notice of intent to disclose.* The Department shall consider a submitter's objections and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever the Department decides to disclose business information over the objection of a submitter, it shall give the submitter written notice, which shall include:

(1) A statement of the reason why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(i) *Notice of lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of information, the Department shall promptly notify the submitter.

(j) *Notice to requester.* Whenever the Department provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the Department shall also notify the requester. Whenever the Department notifies a submitter of its intent to disclose requested information under paragraph (h) of this section, the Department shall also notify the requester. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Department shall notify the requester.

§ 171.14 Fees to be charged—general.

The Department shall seek to charge fees that recoup the full allowable direct costs it incurs in processing a FOIA request. It shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Department will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. With the exception of requesters seeking documents for a commercial use, the Department will provide the first two hours of search time and the first 100 pages of duplication without charge. By making a FOIA request, the requester shall be considered to have agreed to pay all applicable fees up to \$25.00 unless a fee waiver has been granted.

(a) *Searches for responsive records.* If the Department estimates that the search costs will exceed \$25.00, the requester shall be so notified. Such notice shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet the requester's needs at a lower cost. The request shall not be processed further unless the requester agrees to pay the estimated fees. For both manual and computer searches, the Department shall charge the estimated direct cost of each search based on the average current salary rates of the categories of personnel doing the searches. Further information on search fees is available by clicking on "FOIA" at the Department's Web site at <http://www.state.gov> or directly at the FOIA home page at <http://foia.state.gov>.

(1) *Manual searches.* The Department will charge at the salary rate (*i.e.*, basic pay plus 16 percent of basic pay) of the employee making the search.

(2) *Computer searches.* The Department will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary attributable to the search.

Department of State

§ 171.15

(b) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are releasable. Charges may be assessed for the initial review only; *i.e.*, the review undertaken the first time the Department analyzes the applicability of a specific exemption to a particular record or portion of a record.

(c) *Duplication of records.* Records shall be duplicated at a rate of \$.15 per page. For copies prepared by computer, such as tapes or printouts, the Department shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Department shall charge the actual direct costs of producing the document. If the Department estimates that the duplication costs will exceed \$25.00, the requester shall be so informed. The request shall not be processed further unless the requester agrees to pay the estimated fees.

(d) *Other charges.* The Department shall recover the full costs of providing services such as those enumerated below:

(1) Certifying that records are true copies (*see* part 22 of this chapter);

(2) Sending records by special methods such as express mail, overnight courier, etc.

(f) Payment shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the Information and Privacy Coordinator.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

[69 FR 63935, Nov. 3, 2004, as amended at 72 FR 57858, Oct. 11, 2007]

§ 171.15 Fees to be charged—categories of requesters.

Under the FOIA, there are four categories of requesters: Commercial use requesters, educational and non-commercial scientific institutions, representatives of the news media, and all

other requesters. The fees for each of these categories are:

(a) *Commercial use requesters.* When the Department receives a request for documents for commercial use as defined in § 171.11(1), it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (*see* § 171.16(b)).

(b) *Educational and non-commercial scientific institution requesters.* The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution, as defined in § 171.11(m) and (n), and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) *Representatives of the news media.* The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 171.11(o), and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a commercial use request.

(d) *All other requesters.* The Department shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.